

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**HABITAT EDUCATION CENTER, INC., et al,
Plaintiffs,**

v.

Case No. 08-C-0043

**UNITED STATES FOREST SERVICE, et al.,
Defendants.**

ORDER

Plaintiffs filed the present action pursuant to the Administrative Procedure Act (“APA”), the National Environmental Policy Act (“NEPA”), and the National Forest Management Act (“NFMA”), challenging the Forest Service’s decision to approve a timber project in the Chequamegon-Nicolet National Forest (“CNNF”), the “Fishbone” project. Pending before the court are the parties’ cross-motions for summary judgment. Briefing on the motions has been completed, and oral argument is scheduled for January 28, 2009. On January 13, 2009, I issued a decision and order in a case involving parties and issues that are similar, though not identical, to the present case. That decision upheld the Forest Service’s decision to implement a different timber project in the CNNF, known as “Twentymile.” My Twentymile decision prompted plaintiffs to file in the present case a motion to allow supplemental briefing and defer oral argument so that they can (1) provide additional detail to address specific deficiencies in Fishbone “in light of the Court’s opinion in the Twentymile case,” (2) “highlight key differences” between Twentymile and Fishbone, and (3) “address issues differently reflecting the Court’s January 13, 2009, Decision.” (Pls.’ Mot. to Defer Oral Argument at 1.) The Forest Service opposes the motion on the ground that supplemental briefing is unnecessary and will only delay the Forest Service’s ability to either move forward with the project or correct any deficiencies that the court identifies.

I agree that supplemental briefs are unnecessary, and therefore plaintiffs' motion is denied. Although I understand that plaintiffs may wish to modify their arguments in light of my recent opinion, I find that they can do so at oral argument. Plaintiffs' briefs already identify the specific grounds on which they challenge the Fishbone project, and plaintiffs have not stated that they want to raise any new grounds for invalidating the Forest Service's decision. Thus, the court is already familiar with plaintiffs' arguments, and plaintiffs can use oral argument to explain whatever modifications they wish to make to the arguments as presented in their briefs. If after oral argument, I find that it would be useful to ask for supplemental briefs, I will do so.

I also point out that plaintiffs do not need to "highlight key differences" between Twentymile and Fishbone because I will not be using Twentymile as a yardstick for determining whether Fishbone complies with NEPA or NFMA. Rather, I will apply the legal standards set forth in my Twentymile decision (and any legal standards relevant to Fishbone that were not relevant to Twentymile) to the Fishbone administrative record. For this reason, the parties need not compare and contrast Fishbone and Twentymile. They can focus on applying the relevant NEPA and NFMA standards directly to the Fishbone administrative record.

THEREFORE, IT IS ORDERED that plaintiffs' motion to defer oral argument is **DENIED**.

Dated at Milwaukee, Wisconsin, this 17 day of January, 2009.

/s _____
LYNN ADELMAN
District Court Judge